

IT 95-91
Tax Type: INCOME TAX
Issue: Federal Change (Individual)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

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THE DEPARTMENT OF REVENUE      )  
OF THE STATE OF ILLINOIS      )  
                                )  
                                )    No.  
                                )    SSN  
                                )  
v.                              )  
                                )  
TAXPAYER,                      )  
                                )  
                                )    Daniel D. Mangiamele  
                                )    Admin. Law Judge  
                                )  
                                )  
Taxpayer                      )  
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as the result of a timely Request for Hearing by Taxpayer (hereinafter referred to as the "taxpayer") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to her on April 10, 1995. The basis of the Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that taxpayer had failed to file an Illinois Income Tax return and report a settled Federal Income Tax change for the tax year ended December 31, 1990. The Notice asserted a tax liability, as well as a penalty pursuant to 35 ILCS 5/1005 for failure to pay the entire tax liability by the due date.

In the taxpayer's Protest, she did not agree with the Department's proposed tax assessment for 1990 because she claims she was not a full time Illinois resident in 1990. A hearing was not requested in this matter.

The issues to be resolved are:

1. Whether the taxpayer was an Illinois resident in 1990?
2. Whether taxpayer failed to file an Illinois income tax with

return Schedule NR for the 1990 tax year?

3. Whether penalties should be assessed pursuant to 35 ILCS 5/1005?

Following the submission of all evidence and a review of the record, it is recommended that the Notice of Deficiency be upheld.

FINDINGS OF FACT:

1. For the taxable year ended December 31, 1990, taxpayer did not file an IL-1040 return with a Schedule NR reflecting part-year Illinois residency.

2. On March 1, 1995, the Department requested taxpayer to complete a 1990 IL-1040 NR return in order to process taxpayer's return. Taxpayer did not file said return.

3. On April 10, 1995, the Department issued a Notice of Deficiency in the amount of \$185.00 for the tax and penalties due to taxpayer's failure to file.

4. Taxpayer failed to file a Schedule NR return or produce a State of Georgia tax return for 1990.

5. Taxpayer failed to submit documentary evidence that she was not a full-time Illinois resident.

CONCLUSIONS OF LAW: All persons who either earn or receive income in or as a resident of the State of Illinois are subject to Illinois income tax. 35 ILCS 5/201(a) On this record taxpayer failed to offer sufficient evidence that she was not an Illinois resident who earned income in this state. The mere allegation that taxpayer was a resident in another state does not prove she was a non-Illinois resident. Taxpayer filed a 1990 Illinois 1040 return. She was given the opportunity to file a 1040 with a NR Schedule, but she did not do so. Further, she did not submit any documentation that she was a Georgia resident. 35 ILCS 5/101 et seq

The Notice of Deficiency is prima facie correct so long as its proposed adjustments meet some minimum standard of reasonableness. Vitale

v. Illinois Department of Revenue, 118 Ill.App.ed 210 (3rd Dist. 1983). In order to overcome this prima facie correctness, the taxpayer must present competent evidence that the proposed adjustments are incorrect. Masini v. Department of Revenue, 60 Ill.App.3d 11 (1st Dist. 1978) In the instant case, no documentary evidence was proffered on behalf of the taxpayer. Thus, the taxpayer failed to prove the Notice of Deficiency incorrect, and the amount established, therefore, remain as true and correct.

Taxpayer has failed to demonstrate through testimony, exhibits or argument any evidence to overcome the Department's prima facie case establishing tax liability herein. Accordingly, the amounts set forth in the Notice of Deficiency stand unrebutted and correct. On the foundation of the foregoing findings of fact and conclusions of law, it is therefore recommended that the Notice of Deficiency be finalized as issued.

Administrative Law Judge